

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-385

December 23, 1998

BELL-ATLANTIC - MAINE
Proposed Tariff Revision to
Introduce Value Pack

ORDER LIFTING SUSPENSION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we lift the suspension of Bell Atlantic's "ValuePack" filing and approve it. Bell Atlantic filed the case as a tariff revision on May 22, 1998.

II. BACKGROUND

"ValuePack" is Bell Atlantic's name for a billing arrangement that provides one-party residential customers the opportunity to subscribe to any number of Custom Calling, Phonesmart, and Ringmate services for a single discounted monthly rate of \$17.99.¹ To obtain ValuePack, however, a customer must use Bell Atlantic for both local exchange service and in-state long distance service (toll). Although all the services that can be included in ValuePack - as well as the ValuePack product itself - are available at wholesale discounts for resale by competitive local exchange carriers (CLECs), no CLEC has taken them. Indeed, in Bell Atlantic's Alternative Form of Regulation (AFOR) we have classified as "core-discretionary" all but Call Waiting ID and the "With Name" Caller ID services.²

Requiring customers to take a competitive service (toll) in order to obtain a deeply-discounted package of essentially non-competitive local exchange services (ValuePack) could be construed as anti-competitive. To investigate that possibility, we suspended the ValuePack filing on June 18, 1998, and again on September 21, 1998.

¹Custom Calling Services are: Call Waiting; Call Forwarding; Call Forwarding II, Three-Way Calling; Speed Dialing-8 Codes; and Speed Dialing-30 Codes. Phonesmart services are: Call Return; Repeat Dialing; Caller ID; Caller ID with Name; Call Waiting ID; Call Waiting ID with Name; Caller ID Manager; and Caller ID Manager with Name. Ringmate (distinctive ring) services are Ringmate I and Ringmate II.

²In the AFOR, core-discretionary services are optional services having little competition and no reasonable substitutions.

III. RESULTS OF INVESTIGATION

1. For customers who have ValuePack and who call Bell Atlantic to change from Bell Atlantic to another in-state toll carrier, the instructions in the Bell Atlantic customer service representatives' instructional material contain suggestions to these customers that do not appear to be competitively neutral, and could have the effect of discouraging the customers' decisions to change from Bell Atlantic to another toll carrier. This could violate an important feature of our Order approving the IntraLATA Presubscription (ILP) Stipulation in Docket No. 97-204, namely: "[n]o ILP marketing activities will occur during customer initiated calls made to carriers for the purpose of effecting an ILP PIC [i.e., a toll carrier] change." *New England Telephone & Telegraph Company, Implementation Plan for the Introduction of IntraLATA presubscription (ILP)*, Order Approving Stipulation, Docket No. 97-204, Attachment A, pgs. 15-16.

2. We found that in most of the jurisdictions in which Bell Atlantic has filed ValuePack, or its equivalent, it has been unopposed and the state commissions have approved it.

3. Even at the ValuePack rate, the average per service rate in a customer's selected ValuePack product will be far above each service's long-run incremental cost; therefore, the rates of other services, such as local exchange and toll, are not subsidizing the services of ValuePack.

4. Interexchange carriers (IXCs) have a competitive advantage over Bell Atlantic in the toll market because of their ability to provide customers both interLATA and intraLATA toll. Bell Atlantic-Maine is prohibited from offering interLATA toll in the Bell Atlantic service territory until it satisfies all fourteen requirements of Section 271 of the Telecommunications Act of 1996.

5. The ValuePack product will allow a market test of the newer and more costly services, such as Caller ID with Name, Call Waiting ID with Name, and Caller ID Manager with Name, which have yet to achieve significant market penetration.

6. Bell Atlantic's best all-day, every day toll rate of 15¢ per minute is 25% to 50% above several IXCs' best in-state toll rates. For example, currently AT&T's and Sprint's best rate is 10¢ per minute and MCI's is 12¢ per minute. As long as IXCs have substantially lower toll rates than Bell Atlantic's, it is not clear how much of a market will develop for ValuePack.

7. We invited several IXCs, Maine's independent telephone companies, and the Public Advocate to comment on Bell Atlantic's ValuePack filing. No IXC filed comments.³ The Public Advocate filed comments, which reflect concerns similar to those that motivated us to conduct an investigation, and which recommend rejection of the tariff. In its response to the Public Advocate's comments, Bell Atlantic disagreed with characterizing ValuePack services as monopoly services, and argued that the services are available for resale or via a CLEC's own switch. Bell Atlantic also disagreed with characterizing ValuePack's requirement that ValuePack customers use Bell Atlantic for toll service as a tying arrangement. Bell Atlantic argues that it would only be a product tie if Bell Atlantic could use its dominant position in the market for ValuePack services to create a monopoly position in the in-state toll market, which Bell Atlantic no longer can do.

IV. CONCLUSION

Based on our investigation, we approve Bell Atlantic's ValuePack filing. However, we will continue to monitor this offering, and if after a reasonable period an IXC provides evidence that Bell Atlantic's requirement that ValuePack customers use Bell Atlantic for in-state toll constitutes a significant barrier to the IXC's ability to increase its share of Maine's in-state toll market, we may well further investigate the ValuePack offering. In addition, we require Bell Atlantic to revise the instructions to its customer service representatives to make the instructions competitively neutral to ValuePack customers who call Bell Atlantic to request that their toll carrier be changed from Bell Atlantic to another company.

Accordingly, we

O R D E R

1. That Bell Atlantic revise page 7 of the ValuePack Customer Service Activation Letter to make it competitively neutral, eliminate any re-marketing of ValuePack, inform customers that ValuePack will be removed from their accounts, provide customers the tariffed rates of the services in their ValuePack product, and submit the revised page as a compliance filing within 30 days of this Order; and

³In Virginia, AT&T filed comments objecting to Bell Atlantic-VA's ValuePack equivalent (called "Big Deal"). AT&T indicated it would have no objection to such a product if Bell Atlantic-VA had statewide ILP, as that would remove a significant barrier to intraLATA toll competition. In Maine that barrier has been removed; Bell Atlantic and the independent telephone companies have implemented ILP statewide.

2. That the Order Suspending this filing be lifted and the ValuePack filing be allowed to go into effect on the date of this Order.

Dated at Augusta, Maine this 23rd day of December 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.